

THIS REPORT CONTAINS ASSESSMENTS OF COMMODITY AND TRADE ISSUES MADE BY USDA STAFF AND NOT NECESSARILY STATEMENTS OF OFFICIAL U.S. GOVERNMENT POLICY

Voluntary    Public

**Date:** 5/11/2012

**GAIN Report Number:** IT1213

## Italy

**Post:** Rome

### **European Court Likely to Rule Italy's Biotech Authorization is Not Legal**

**Report Categories:**

Biotechnology and Other New Production  
Technologies

**Approved By:**

Jim Dever

**Prepared By:**

Stefano Baldi

**Report Highlights:**

The EU Court of Justice (ECJ) has drafted preliminary conclusions in Pioneer Hi-Bred Italy's case against the Italian Ministry of Agriculture's (ITMinAg) requirement for separate and additional Ministry approval to plant EU-approved GM corn in and to comply with coexistence regulations. After failing to solve the case, the Italian court appealed to the ECJ, which on April 26, 2012, issued its conclusions that EU-approval crops may not be subjected to national authorization procedures.

**General Information:**

According to the Italian decree 212/2001, the ITMinAg must authorize the cultivation of EU-approved GM crops. An important factor in this authorization is that the cultivation complies with establish coexistence regulations. However, thus far, neither the central government nor the Regions have established coexistence legislation. Therefore, when Pioneer Hi-Bred Italy requested authorization for the cultivation of EU-approved GM corn in 2008, the ITMinAg refused due to the absence of coexistence rules. Pioneer appealed to the Italian administrative justice, which passed it to the European Court of Justice in January 2011 due to a jurisdiction dispute. Pioneer argues the ITMinAg decree conflicts with EU legislative framework.

The ECJ discussed the case in March 2012. The ECJ attorney issued his conclusions on April 26, 2012. The conclusions serve as a recommendation for the final court ruling. According to the lawyer opinion, "Genetically modified organisms, such as hybrids of genetically modified maize derived from MON 810, which were authorized in particular as seeds for cultivation, notified as existing products, and accepted for inclusion in the European common catalogue of species of agricultural plants, may not be subjected to a national authorization procedure."

Of critical importance to Pioneer's case was the ECJ lawyer interpretation of Article 26a of Directive 2001/18/EC, "On the Deliberate Release into the Environment of Genetically Modified Organisms." According to the conclusions, the lawyers does not interpret Article 26a to "allow a Member State to oppose the cultivation in its territory of genetically modified organisms, pending the adoption at national, regional or local level of measures to avoid the unintended presence of genetically modified organisms in other crops."